

Response Under 37 C.F.R. §41.37
Appellant's Brief

Application No. 10/585,902
Paper Dated: February 13, 2012
In Reply to USPTO Correspondence of July 14, 2011
Attorney Docket No. 0470-061793

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No. : 10/585,902 Confirmation No. 4065
Applicant : KAREN RITA CRAWFORD
Filed : 2/7/2005
Title : PACKAGING FOR PULVERULENT MATERIAL
Group Art Unit : 3721
Examiner : Hemant M. Desai
Customer No. : 28289

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Appellants submit this Appeal Brief in support of the Notice of Appeal filed December 12, 2011.

The headings used hereinafter and the subject matter set forth under each heading are in accordance with 37 C.F.R. § 41.37.

I hereby certify that this correspondence is being electronically
submitted to the United States Patent and Trademark Office on
February 13, 2012.

02/13/2012

Date

Christine A. Canavan

Signature

Christine A. Canavan

Typed Name of Person Signing Certificate

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I

REAL PARTY IN INTEREST

The real party of interest in this Appeal is N. V. Nutricia, Eerste Stationsstraat 186, Zoetermeer, Netherlands NL-2712 HM. The Assignment to N.V. Nutricia is recorded at Reel/Frame 019087/0191.

II

RELATED APPEALS AND INTERFERENCES

None.

III

STATUS OF CLAIMS

Claims 40 and 44-52 are pending in this application, stand rejected, and are appealed. Claims 1-19, 35-38, and 41-43 have been cancelled, while claims 20-34 and 39 have been withdrawn.

IV

STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection.

V

SUMMARY OF CLAIMED SUBJECT MATTER

40. A method for providing a packaging (1) filled with powder (11) [Page 5, lines 28-32] comprising the provision of a container (2) provided with a base (17) and a top which has a peripheral edge (23), the inside wall of the container (2) consisting of a heat-sealable material, filling powder (11) into said container (2), providing a heat-sealable film [Page 8, lines 20-24] having a tear lip and a weakening line [Page 8, lines 20-24], placing the heat-sealable film above the powder (11) [Page 3, lines 24-29] and permanently joining [Page 3, lines 30-31] said

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film to said inside wall [Page 8, lines 20-24] of the container (2) 20-50 mm [Page 9, lines 16-18] below the peripheral edge (23), provision being made for the fitting of a lid (3), said packaging further comprising a scoop (8) for dosing said powder (11), accommodated by the top part of the container (2), wherein said method further comprises the step of placing the scoop (8) on the heat-sealable film [Page 3, lines 24-29], said method further comprising the step of providing a lid (3) provided with fixing means (7) for said scoop (8), said lid (3) fixed, such that it can hinge (5) to a lid rim (4), said lid and lid rim (4) provided from a single part of plastic material, and said method further comprising the step of adhering said lid rim (4) onto the peripheral top edge (23) of said container (2), for defining an accommodation space (r) between said lid (3) and said heat-sealable film for said scoop (8).

51. A method for providing a packaging (1) filled with powder (11) comprising the provision of a container (2) provided with a base (17) and a top which has a peripheral edge (23), the inside wall of the container (2) consisting of a heat-sealable material, filling powder (11) into said container (2), placing a heat-sealable film [Page 8, lines 20-24] above the powder (11) and joining [Page 3, lines 30-31] said film to said inside wall [Page 8, lines 20-24] of the container 20-50 mm [Page 9, lines 16-18] below the peripheral edge (23), provision being made for the fitting of a lid (3), said packaging further comprising a scoop (8) for dosing said powder (11), accommodated by the top part of the container (2), wherein said method further comprises the step of placing the scoop (8) on the heat-sealable film [Page 3, lines 24-29], said method further comprising the step of providing a lid (3) provided with fixing means (7) for said scoop (8), said lid (3) fixed, such that it can hinge (5) to a lid rim (4), said lid (3) and lid rim (4) provided from a single part of plastic material, said method further comprising the step of adhering said lid rim (4) onto the peripheral top edge (23) of said container (2), for defining an accommodation space (r) between said lid (3) and said heat-sealable film for said scoop (8), and wherein said container wall [Page 8, lines 20-24] consists of a paper (20)/metal (21) foil/plastic (22) laminate [Page 9, lines 24-30], said plastic laminate being a heat-sealable material, and wherein said seal comprises a plastic film seal [Page 9, lines 24-30], which seal is

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permanently fixed [Page 5, lines 28-32] to said container wall by heat sealing [Page 3, lines 20-25].

VI

GROUND'S OF REJECTION TO BE REVIEWED ON APPEAL

Are claims 40, 44, 45, and 48-52 obvious under 35 U.S.C. §103(a) from the teaching of French Patent No. FR 2747107 (hereinafter the "French patent") in view of Japanese Patent No. JP 10-219 529 A to Suzuki, et al. (hereinafter the "Suzuki patent")?

Are claims 46 and 47 obvious under 37 U.S.C. §103(a) from the teaching of the French patent and the Suzuki patent as applied to claim 40 further in view of the teaching of U.S. Patent No. 3,556,174 to Gibble (hereinafter the "Gibble patent")?

VII

ARGUMENT

Pursuant to 37 C.F.R. § 41.37(c)(VII), it is requested that the patentability of each claim argued separately be considered separately.

Claim 40:

Rejection Under 35 U.S.C. §103(a)

Independent claim 40 includes the following limitation:

A method for providing a packaging filled with powder comprising the provision of a container provided with a base and a top which has a peripheral edge, the inside wall of the container consisting of a heat-sealable material, filling powder into said container, providing a heat-sealable film having a tear lip and a weakening line, placing the heat-sealable film above the powder and permanently joining said film to said inside wall of the container 20-50 mm below the peripheral edge, provision being made for the fitting of a lid, ...

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said method further comprising the step of adhering said lid rim onto the peripheral top edge of said container, for defining an accommodation space between said lid and said heat-sealable film for said scoop. (underline added)

On page 2 of the Office Action, the Examiner rejects claims 40, 44, 45, and 48-52 under 35 U.S.C. §103(a) as being obvious from the teaching of the French patent in view of the teaching of the Suzuki patent. Specifically, on pages 2 and 3 of the Office Action, the Examiner argues as follows:

French Patent as mentioned above, disclose all the claimed limitations, including a film (7, 16) inside the container permanently. French Patent is silent about permanently heat-sealing the film inside the wall of the container, instead French Patent discloses to deform (16) of the lid (7) (Fig. 6) to make the room for the spoon (3). However, Suzuki et al. disclose that it is known in the art to place a heat sealable film (3) inside the container and seal the film with the inside wall of the container (see figs. 1-2). Because both Reference French Patent and Suzuki et al. teach methods for placing the film inside the container, it would have been obvious to one skilled in the art to substitute one method for the other to achieve the predictable result of making a room between the film and lid. **KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007).**

Regarding the claimed distance 20-25 mm below the peripheral and the distance claimed in claim 48, it is obvious to one having an ordinary skill in the art to adjust the distance of the film below the peripheral edge depending on the size of the spoon.

Regarding claim 44, French Patent discloses that the provision of a container comprises using blanks of wall material and base material as the starting materials and joining these together immediately before filling with product.

Regarding claim 45, French Patent discloses that the heat-sealable film provides a gastight seal.

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Regarding claims 49-50, the modified French Patent teaches that the container wall contains a heat-sealable material on the inside, and wherein the seal comprises a plastic film seal, which seal is fixed to the container wall by heat sealing.

There is no discussion in the Office Action providing reasons for the rejection of claims 48 and 52.

In rejecting these claims, the Examiner relies on a combination of the French patent and the Suzuki patent. A copy of English language machine translations of both the French patent and the Suzuki patent are attached herewith as part of Appendix IX. A key feature of the subject invention, as found in claim 40, is the connection of the heat-sealable film to the wall of the container well below the level of the top edge. This, in combination with the tear line, ensures that the container can be tightly sealed by the film recessed within the container, yet easily opened. The fact that the connection to the wall is at a distance from the top edge allows the lid, with the spoon attached thereto, to be fitted without engaging the film or without reshaping the film to conform to the spoon. Specifically, the film is joined to the inside wall of the container 20–50 mm below the peripheral edge.

The French patent describes a lid (7) that is crimped to the upper edge of the container (4). The lid (7) has a ring pull for removal along a line of weakness. The container (4) will be identified immediately by the person of ordinary skill as being a metal can. This can be seen by the horizontal straightening ridges visible in Figs. 1-4. Removable lids or closures of this type are well known in the canning industry. A significant force is required to remove such lids, and the rugged construction at the rim of the can is required to ensure that the can is not distorted or that the crimp is not undone.

Overall, the French patent teaches three separate embodiments of a covered package.

Figs. 1-4 disclose an arrangement utilizing a container (4) having a standard pull-tab lid (7). There are no provisions made for accommodating the scoop (3) prior to removal of the lid (7). In the arrangement illustrated in Fig. 2, the cover (1) cannot be closed because it

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would bump the scoop (3). It is only after the lid (7) is removed that the scoop (3) may extend into the container cavity above the level of the powder (15).

Fig. 3 discloses a second embodiment, whereby the container is identical to that shown in Figs. 1-4, but now the cover (1) is modified to accommodate the scoop (3).

Fig. 4 discloses a third embodiment, wherein the lid (7) is shaped to conform with the shape of the scoop (3) when the scoop (3) is secured within the cavity of the container (4).

In each of these three embodiments, the lid (7) is secured at the top of the container (4) and the cover (1) is placed over the lid (1). There is no discussion of the manner by which the lid (7) is secured to the container (4).

The cover (1), as stated with the description of Fig. 2 in the machine translation of the French patent, is a snap-on cover or may be secured by gluing or welding. However, the cover (1) may be glued or welded to the container only in the embodiments illustrated in Figs. 3 and 4.

Furthermore, the French patent clearly does not teach or suggest a heat-sealable film joined to an internal wall at an extended distance (20-50 mm) from the top edge as found in claim 40.

Suzuki, on the other hand, describes a beverage carton (see translation at [0001]). It includes a pull tab (6) covering an opening (5) (see [0007] and Figs. 1-2) in the top surface (3) of the carton. The top surface (3) and the bottom surface are attached to the upper most edge and the lowermost edge, respectively, of the cylindrical side wall 1 by heat sealing (see [0007]) and by folding over the upper rim and lower rim. It is an essential aspect of the Suzuki patent that the top surface (3) is attached at the upper edge of the cylindrical sidewall. This can be understood from paragraph [0010] and Fig. 4, which explains that the lid material has two layers of heat seal adhesive 31, 31a. However, the top surface (3) and bottom surface (2) are secured to their respective ends, as far as can be understood, by folding the top surface (3) and the bottom surface (2) over the edge of the container. This design does not permit the top surface (3) or the bottom surface (2) to be recessed within the container a distance of 20-50 mm.

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Therefore, just as with the French patent, there is neither a teaching nor a suggestion of a heat-sealable film joined to an internal wall at an extended distance (20-50mm) from the top edge.

As a result, neither the French patent nor the Suzuki patent provides teaching of a heat-sealable film and arranged at a distance from the top edge. This distance facilitates storage of a scoop. Additionally, the Suzuki patent discloses a totally unrelated package which is not intended to receive a modified lid and would have no reason to include a scoop. Therefore, in addition to the other arguments presented heretofore, the Appellant believes it is not appropriate to combine the teaching of the Suzuki patent.

The Examiner states that the French patent discloses deforming (16) the film (7) (Fig. 6) to make room for the spoon (3), and that in view of the teaching of the Suzuki patent, heat sealing the film inside the wall of the container would be obvious.

Combining the teaching of the French patent with that of the Suzuki patent would, if anything, produce the arrangement of Fig. 6 of the French patent with a laminate design and a heat sealed lid (7). Typical to standard design, the lid (7) would be perforated for removal along a single plane, thereby leaving a conical lid rim portion in place. As a result, a significant amount of product would be very difficult, if not impossible, to remove, since the contents could not poured out but would be retained in the inverted conical cavity.

Furthermore, there is no lid rim in the Suzuki patent and even if there were, it would not adhere to the peripheral edge of the container because the peripheral edge has been folded over into the interior of the container.

While the Examiner has argued that the 20 mm–50 mm requirement is a trivial adaptation to the size of the spoon, neither the French patent nor the Suzuki patent show any distance between the connection with the inside wall and the peripheral edge. The value of 20 mm–50 mm has been included in the claim to emphasize that this distance is not a *de minimis* distance but a clear spacing sufficient to allow the fitting of a lid rim to the exposed portion of the peripheral edge.

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For these reasons, Appellants believe that claim 40 is patentably distinct over the teaching of the French patent in light of the teaching of the Suzuki patent.

Claim 44:

Claim 44 depends from claim 40 and recites the provision of the container comprises using blanks of wall material and base material as a starting material and joining these together immediately before filling with product. By its dependence upon what is believed to be patentably distinct independent claim 40, dependent claim 44 is itself believed to be patentably distinct over the prior art of record.

Claim 45:

Claim 45 depends from claim 40 and recites that the heat-sealable film provides a gastight seal. By its dependence upon what is believed to be patentably distinct independent claim 40, dependent claim 45 is itself believed to be patentably distinct over the prior art of record.

Claim 48:

Claim 48 depends from claim 40 and indicates that the heat-sealable film is provided less than 10 mm above the powder. The Examiner does not provide reasons for this rejection in the Office Action.

Nevertheless, the French patent and the Suzuki patent do not either individually or in combination teach or suggest a heat-sealable film provided less than 10 mm above the powder. Absent such a disclosure, these references either individually or in combination do not anticipate or make obvious claim 48.

Claim 49:

Claim 49 depends from claim 40 and indicates that the container wall contains a heat-sealable material on the inside and, wherein the seal comprises the plastic film seal which is

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fixed to the container wall by heat sealing. By way of its dependence upon what is believed to be patentably distinct independent claim 40, dependent claim 49 is itself believed to be patentably distinct over the prior art of record.

Additionally, neither the French patent nor the Suzuki patent teach or suggest heat-sealable material on the container wall inside, wherein a plastic film seal is fixed to the container wall by heat sealing. Absent such a teaching or suggestion, these references either individually or in combination do not anticipate or make obvious claim 49.

Claim 50:

Claim 50 is directed to a method where said container walls consist of a paper/metal foil/plastic laminate. By its dependence upon what is believed to be patentably distinct independent claim 40, dependent claim 50 is itself believed to be patentably distinct over the prior art of record.

Claim 51:

Independent claim 51 includes the following limitation:

...placing a heat-sealable film above the powder and joining said film to said inside wall of the container 20-50 mm below the peripheral edge, provision being made for the fitting of a lid, ...

...wherein said container wall consists of a paper/metal foil/plastic laminate, said plastic laminate being a heat-sealable material, and wherein said seal comprises a plastic film seal, which seal is permanently fixed to said container wall by heat sealing.

Independent claim 51 includes the limitations of claim 40 without a tear lip and a weakening line on the heat-sealable film, but specifying that the container walls consist of paper/metal foil/plastic laminate, and wherein said seal comprises a plastic film seal, which seal is permanently fixed to said container wall by heat sealing.

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As a result, the distinctions previously put forth with respect to claim 40, with the exception of those directed to the tear lip and weakening line, apply equally to claim 51. Additionally, claim 51 further specifies that the container wall consists of paper/metal foil/plastic and that the seal is permanently fixed to said container wall by heat sealing. The seal permanently fixed to the container wall by heat sealing at a level 30-50 mm below the container edge allows for the introduction of a spoon between the lid and the cover within deviating from the standard planer shape of typical lids. For this reason and the other reasons put forth with respect to claim 40, excluding those directed to the tear line and weakening line, claim 51 is believed to be patentably distinct over the prior art of record.

Claim 52:

Claim 52 depends from claim 40 and indicates that the powder is baby food. As previously mentioned, the Examiner does not provide reasons for this rejection in the Office Action.

Nevertheless, by way of its dependence upon what is believed to be patentably distinct independent claim 51, claim 52 is itself believed to be patentably distinct over the prior art of record.

Rejections Under 35 U.S.C. §103(a)

Claim 46:

Claim 46 depends from claim 40 and recites that inner gases fed into the space located below the film before/when sealing the film to the container wall.

Neither the French patent nor the Suzuki patent either individually or in combination teach or suggest inner gas fed into the space located below the film before/when sealing the film to the container wall.

Absent such a teaching or suggestion, in light of all of the limits of claim 46, these references either individually or in combination cannot anticipate or render obvious claim 46.

Furthermore, by way of its dependence upon what is believed to be patentably distinct independent claim 40, dependent claim 46 is itself believed to be patentably distinct over the prior art of record.

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Claim 47:

Claim 47 depends from claim 46 and indicates the gas is fed to a number of packs simultaneously.

Neither the French patent nor the Suzuki patent either individually or in combination teach or suggest gas fed to a number of packs simultaneously. Absent such a teaching or suggestion, the French patent and the Suzuki patent neither individually or in combination do not teach or suggest this feature.

Absent such a teaching or suggestion of all the limitations of claim 47, the French patent and the Suzuki patent either individually or in combination do not anticipate or render obvious claim 47.

Furthermore, by way of its dependence upon what is believed to be patentably distinct independent claim 40, dependent claim 47 is itself believed to be patentably distinct over the prior art of record.

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CONCLUSION

As can be seen, the French patent and the Suzuki patent either individually or in combination, do not teach or suggest a method for providing a packaging filled with powder having all of the limitations of claims 40-51.

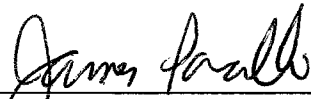
It is respectfully urged that the final rejection on the merits be reversed and a Notice of Allowance issued.

The fee under 37 C.F.R. 41.20(b)(2) for filing an Appeal Brief in support of an appeal is being charged to Appellants' representative's credit card concurrent with the filing of this Appeal Brief.

The Commissioner of Patents and Trademarks is hereby authorized to charge any additional fees which may be required to Deposit Account Number 23-0650. Please refund any overpayments to Deposit Account Number 23-0650.

Respectfully submitted,

THE WEBB LAW FIRM

By 

James G. Porcelli
Registration No. 33,757
Attorney for Appellants
One Gateway Center
420 Ft. Duquesne Blvd., Suite 1200
Pittsburgh, PA 15222
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com

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VIII

CLAIM APPENDIX

40. A method for providing a packaging filled with powder comprising the provision of a container provided with a base and a top which has a peripheral edge, the inside wall of the container consisting of a heat-sealable material, filling powder into said container, providing a heat-sealable film having a tear lip and a weakening line, placing the heat-sealable film above the powder and permanently joining said film to said inside wall of the container 20-50 mm below the peripheral edge, provision being made for the fitting of a lid,

said packaging further comprising a scoop for dosing said powder, accommodated by the top part of the container, wherein said method further comprises the step of placing the scoop on the heat-sealable film,

said method further comprising the step of providing a lid provided with fixing means for said scoop, said lid fixed, such that it can hinge to a lid rim, said lid and lid rim provided from a single part of plastic material, and

said method further comprising the step of adhering said lid rim onto the peripheral top edge of said container, for defining an accommodation space between said lid and said heat-sealable film for said scoop.

Claims 41-43 (Cancelled).

44. The method according to claim 40, wherein the provision of a container comprises using blanks of wall material and base material as the starting materials and joining these together immediately before filling with product.

45. The method according to claim 40, wherein said heat-sealable film provides a gastight seal.

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46. The method according to claim 40, where inert gas is fed into the space located below the film before/when sealing the film to the container wall.

47. The method according to claim 46, wherein gas is fed to a number of packs simultaneously.

48. The method according to claim 40, wherein said heat-sealable film is provided less than 10 mm above said powder.

49. The method according to claim 40, wherein the container wall contains a heat-sealable material on the inside, and wherein said seal comprises a plastic film seal, which seal is fixed to said container wall by heat sealing.

50. The method according to claim 40, wherein said container wall consists of a paper/metal foil/plastic laminate.

51. A method for providing a packaging filled with powder comprising the provision of a container provided with a base and a top which has a peripheral edge, the inside wall of the container consisting of a heat-sealable material, filling powder into said container, placing a heat-sealable film above the powder and joining said film to said inside wall of the container 20-50 mm below the peripheral edge, provision being made for the fitting of a lid,

said packaging further comprising a scoop for dosing said powder, accommodated by the top part of the container, wherein said method further comprises the step of placing the scoop on the heat-sealable film,

said method further comprising the step of providing a lid provided with fixing means for said scoop, said lid fixed, such that it can hinge to a lid rim, said lid and lid rim provided from a single part of plastic material,

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said method further comprising the step of adhering said lid rim onto the peripheral top edge of said container, for defining an accommodation space between said lid and said heat-sealable film for said scoop, and

wherein said container wall consists of a paper/metal foil/plastic laminate, said plastic laminate being a heat-sealable material, and wherein said seal comprises a plastic film seal, which seal is permanently fixed to said container wall by heat sealing.

52. The method according to claim 40, wherein said powder is baby food.

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IX

EVIDENCE APPENDIX

- 1) Machine Translation of French Patent No. FR 2747107 to Bois.
- 2) Machine Translation of Japanese Patent No. 10-291529-A to Suzuki.

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X

RELATE PROCEEDINGS APPENDIX

NONE